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Law's Visual Afterlife

Violence, Popular Culture, and Translation Theory

Naomi Mezey

It's 1876, just after the Battle of Little Bighorn, and Seth Bullock has given up his position as marshall in Montana Territory and has gone to the Black Hills of Dakota Territory to set up a make-shift hardware shop with his partner Sol Star in the gold-rush town of Deadwood. In the eponymous HBO series, the town of Deadwood is portrayed as a muddy, violent, lawless, and illegal town in the heart of Indian country where everyone is trying to make a fortune and stay alive. In his final act as marshall, Bullock hung a horse thief rather than allow him to die at the hands of a mob that had come for him. In giving the man a "legal" killing, Bullock acts out in this first scene of *Deadwood*, the role that will follow him into Dakota Territory: that of a reluctant lawman in a liminal, lawless place. This television scene enacts a primal scene within law—the use of violence in the making and maintaining of the state and the internalizing of violence under the authority claimed by the state.

In 1775, a century before Seth Bullock headed to Deadwood, the chiefs of the Illinois and Piankeshaw tribes granted title to certain of their lands to private individuals. This title was later contested by others who had acquired title to the land through federal land grants, and in 1823 Justice John Marshall authored an opinion in which the U.S. Supreme Court was forced to decide whether Indians have the authority to transfer title to lands they occupy. It was, in effect, a question of who was the legitimate owner of lands within the United States occupied by Indians, of how pervasive the authority was which had been claimed by the European powers, the colonies, and then the state. In *Johnson v. M'Intosh*, Marshall enacts another version of this primal scene: he declares that the Indians' right to title of their land was defeated by the "fundamental principle" of discov-

ery recognized by all the Christian peoples of Europe, a principle which allowed civilized nations to take title to and possession of lands occupied by heathens and which was limited only by “the prior title of any Christian people who may have made a previous discovery.”¹

In *Johnson v. M'Intosh*, the aptly named Marshall not only decides the disposition of the land at issue in this case, but goes on to justify the authority of the United States over all the lands within its claimed territory, including those never wrested from the Indians. It is, in a real-estate sense, a legal killing. His opinion, moreover, is one marked by a certain awareness of how grandiose the claims to authority over the territory of the country are, how momentous the decision, and that awareness makes the rhetorical performance all the more exhaustively and violently asserted. The assertion of the territorial legitimacy of the United States and, paradoxically, the subsequent legal legitimation of the violence that was necessary in order to secure the territory is obsessively rehearsed in Marshall's opinion for the Court.

Representations of the violent conquest of the territory of the United States and the violence necessary to law is so obsessively rehearsed in popular culture as to merit its own film genre—the western. To a lesser extent, science fiction has also specialized in performing the cultural and legal anxiety over state authority and violence, although generally from the perspective of the demise of state order rather than the birth of the state. But why? My interest is in the way popular culture so consistently engages in visual translations of law's repressed yet recurring preoccupation with the violence that makes law possible and that simultaneously maintains and unsettles the legitimacy of the state. Thinking about popular cultural depictions of law as translation can help us unpack the layers and complexities of legal representations in popular culture and help us explain how they circulate as they do. But to speak of “representation” and “translation” is to risk perpetuating the fiction that while popular culture continually portrays or sketches legal scenes, it always speaks in a language that is not law's language; it suggests that culture is never law. But films act as a form of juridical communication just as law acts as a form of cultural transmission. As Desmond Manderson and Laurie Ouellette make especially clear in their contributions to this anthology, film and television are not just depictions of law, but agents of law.² Law, likewise, is an agent of culture. Films, most especially westerns, are part of the evolution and reiteration of the national preoccupation with law's founding violence and

state legitimacy, and the cultural power they generate circulates back into the law.³

In his essay "The Task of the Translator," Walter Benjamin argues that translations enable a work's afterlife. The afterlife is not what happens after death but what allows a work (or event or idea) to go on living and to evolve over time and place and iteration. In its afterlife, the original is transformed and renewed. This chapter explores film's visual translation of law and the role film plays in law's afterlife. Benjamin's theory of translation is useful because it suggests that film translates law not so much by translating from one language to another, or from one discrete domain to another, but by continuing one idea or story in a slightly different but equally potent discourse. The cultural-critical lens of translation highlights the discursive similarities and dissonances between law and film; it allows us to see the legal power of popular visual culture and the cultural power of the law; and it gives us new purchase on thinking about the ways that words, images, power, and violence operate in and circulate through different social arenas. I take up the western series *Deadwood* and the science fiction–western film *Serenity* to explore the representations of state legitimacy and violence at the imagined borderland of time, place, and authority as well as to illustrate the layers of legal translation that film can occasion and their effects on law's afterlife.

My argument focuses on how a few specific legal-cultural scenes translate the dilemmas of state authority, violence, and legal legitimacy into the visual, but it is also because these scenes are illustrative that the argument encompasses the genres from which these images come. Both the western and science fiction, as genres, offer two parallel narratives about a foundational legal problem—the relationship of the state to violence and the paradox of the law's own legitimacy. The narratives of the western tend to be progressive yet nostalgic; they are stories about the founding of the state, the coming of civilization, the taming of the frontier, and the largely successful efforts of the state to displace the Indians and reign in excessive private violence by exercising a monopoly on violence. But the images and stories of westerns are often deeply nostalgic for the kind of men—moral individualists—who were the more masculine precursors to the state but whose existence is incompatible with state power. By portraying the questionable violence used by the state in order to secure its authority and the claiming of an exclusive right to violence on the basis of that authority, westerns can easily be read as critiques of the state and of state legitimacy

and power. Indeed, westerns often read as fantasies of a particular kind of freedom, freedom from both the state and state-ordered morality as it is embodied in law.

The narratives of science fiction are more often dystopic, and its stories about law and violence come in (at least) two versions. In one version, science fiction portrays the state as perfecting its monopoly on violence to the point of abuse. The state itself becomes the perpetrator of excessive violence. Another version of the science fiction genre narrates the future breakdown of the state, the dissolution of its monopoly on force and the return to private violence. This second version is a marriage of the two genres into a futuristic western. These two film genres—the western and the sci-fi western—often translate the legal anxiety over the state's unstable and paradoxical relationship to violence in such a way as to give new and visual life to its persistent instability, an instability that is mostly suppressed in legal discourse. Thinking about the complementarity of westerns and science fiction, seeing them as two sides of the same coin, also illuminates the conceptual artificiality of the dilemma violence appears to present within each genre. As political and legal theorists have long argued, law and violence are not opposites, but one in the same. Law does not prevent violence and violence does not symbolize a breakdown of law. Law and violence require each other.⁴ In its translation into film, this rather radical legal idea has its compelling afterlife.

The western and science fiction both represent life on the borderlands of time and society. Set in the past or the future, the borderlands of the present, westerns and science fiction movies are nonetheless made in various presents. Each genre is “always historicized, grounded . . . in the economic, technological, political, social, and linguistic present of its production, in the ideological structures that shape its visual and visible conceptions of time, space, affect, and social relations.”⁵ Both genres convey in their images and their moods a sense of being outside of the constraints of the present. These genres also often portray the borderlands of law, law in its alleged absence, its unrealized ambitions, its excess, and are peopled by outlaws or those who exist on the fringes of the permissible. They indulge a fantasy of lawlessness. It is a fantasy because the violence evident in these visual portrayals does not signal, as Manderson makes vivid in his discussion of portrayals of torture in *24*, an “abandonment of law” but a “theory of law.”⁶

In order to translate law's unstable relationship to violence, film puts the viewer on the borderlands of both time and society, in the position of

the past or future outlaw, and outside the stability of legal and moral order. Thus the translation is multiplied. It is not just thematic—the translation of ideas about law, the state, and violence—but also temporal and discursive. Temporally, these films translate law into the past and the future through the lens of the present. Discursively, they translate the rhetoric and mythologies of the law into the visual mythologies of film and television. Again, this is not to suggest that law and visual popular culture are two distinct domains or languages as much as they represent different kinds of storytelling and interpretation, and translation functions as a theory of meta-interpretation, a way to move between distinctive interpretive approaches.

On Translation

In general, it can be said that Mardrus does not translate the book's words but its scenes.

—Jorge Luis Borges

Translation has proved to be a fertile ground for theorizing because it is at once an impossible, necessary, and contradictory task: it struggles valiantly with the way language creates and evades meaning; it demonstrates the simultaneous ability and inability of people to bridge the linguistic diversity of the world; and it suggests, at least in the context of languages, the heroism of a dedication to failure. Because there is “no absolute correspondence between languages . . . there can be no fully exact translation.”⁷ A task that is doomed from the start is always compelling—it inspires the optimists to keep trying for success and it beguiles the pessimist with the narratives of lost causes. At its most concrete, translation is about transposing one language into another. Sometimes thought of as reproducing, rendering, or miming, and more rarely as interpretation, translation is first and foremost and quite concretely about language. In my usage, translation is still about language, but it insists on a view of language as always interpretive and necessarily metaphorical and literary. I am using translation to convey what Roman Jakobson has called “intersemiotic transposition—from one system of signs into another,”⁸ from the “language” that is the foundation of legal interpretation to the “language” of filmic and visual interpretation.

Walter Benjamin writes about translation in a distinctly nonmetaphorical sense; he is concerned with the translation of literary work from one language into another. Yet his thinking on the subject is so suggestive and

dynamic that it is particularly well suited to theorizing the circulatory relationship between law's violence and film's. Benjamin has famously argued that translation is not about capturing a likeness to the original, but of securing a future for the original. It produces an "afterlife" in which a work of art endures, although the endurance is far from static. "For in its afterlife—which could not be called that if it were not a transformation and a renewal of something living—the original undergoes a change."⁹ The change Benjamin is interested in is the changing meanings at the very heart of language itself, a process made even more dynamic and vivid when languages change each other through translation. The change occasioned by translation is all the more striking when "the original" is in fact not text, but is instead a social concept, a paradox or a problem fundamental to one discourse that is translated into another discourse, as it is when film takes up, performs, and circulates the "problem" of law's violence and the state's legitimacy. It is not farfetched to say that like literary translations, filmic translations of law change the meanings and methods of law as well.

The task of the translator, for Benjamin, is not to faithfully transmit information or even convey the proper meaning, but to find the "intended effect upon the language into which he is translating which produces in it the echo of the original."¹⁰ This is another way of describing popular cultural representations of law.¹¹ As Manderson argues, popular culture, as it circulates "earlier modes of thinking" about the law, is "an echo, a counterpoint, a trace."¹² It is, in other words, an important part of law's afterlife. Thus it is that Benjamin has less interest in the twin concerns that have traditionally guided assessment of translations: fidelity and freedom. "These ideas seem to be no longer serviceable to a theory that looks for other things in a translation than reproduction of meaning."¹³ In translating the paradox of state authority and law's violence, films are not reproducing the authoritative meaning of any particular original text, nor are they unproblematically conveying a legal idea. They are instead ensuring the afterlife of a central idea or anxiety within law by ritualizing and rethinking the problem through the lens of a different interpretive method. And because translation implies a relationship, law's visual afterlife in film reengages law and changes the way we think about the legal anxieties that it translates.

Homi Bhabha likens the task of translation to the postcolonial experience, cultural difference, and how newness enters the world. In this context, the question is not what is lost in translation but what resists trans-

lation and is untranslatable.¹⁴ Bhabha understands translation as “the performative nature of cultural communication” and in this sense is interested in the “movement of meaning,” or the foreign element that disrupts cultural understanding.¹⁵ Similarly, I envision law and popular culture as two distinct forms of cultural communication where each often performs the other. Bhabha’s theory of translation is also productive because it highlights the disruptions that are occasioned by law’s visual afterlife. There are many gaps and absences in the law, only one example of which are the absences that attend law’s story of its own legitimacy. This gap is both obsessively translated into film and television and it also resists translation, because to make it visible obscures the violence done by glossing over it, as Marshall does in *M’Intosh*. Lastly, Bhabha is important because the scenes of law’s extralegal origin that I canvas in this chapter all take place in the context of colonial encounters, either in the confrontation between an aspiring state and its native inhabitants (as in *M’Intosh* and *Deadwood*), or in the imperial ambitions of a future alliance between the United States and China (as in *Serenity*).

To consider the filmic translations of law’s violence is to think about intersemiotic transposition, the transposing of violent “scenes” within the law, scenes that have animated legal discourse for centuries, onto the screen, where the style of the translated violence has animated entire visual genres. Borges has suggested that the freedom to translate scenes rather than words belongs to the illustrator rather than the translator.¹⁶ But when one translates from law to film, the translator is an illustrator. Despite the textuality of script and dialogue, movies are primarily visual. As Abe Mark Nornes has noted, in considering the translation of movie subtitles, in film “every element of verbal and visual language is read off the image.”¹⁷ Law’s force must be translated from text, rhetoric, and myth to image and narration. Law can “look” like law when it is visual, but can it “act” like law, can it command, take, punish, give?

James Boyd White has brought the idea of translation to the law most explicitly, and in his justly famous book, *Justice as Translation*, he tends to think about translation in a way that is very compatible with Benjamin, as “a reiteration of what was said before in a new context where it can have a life that is at once old and new.”¹⁸ For White, translation is a method that is natural to law, which requires old laws to be applied to new contexts, which must translate past precedent into present judgments. White makes clear the way in which law, like film, is at heart a mode of interpretation. Part of his originality lies in conceiving of legal method as an aesthetic and

literary endeavor. “The process of giving life to old texts by placing them in new ways and in new relations is of course familiar to us as lawyers. It is how the law lives and grows and transforms itself, for the law is nothing if not a way of paying attention and respect to what is outside ourselves: to texts made by others in the past, which we regard as authoritative, and to texts made in the present by our fellow citizens, to which we listen. We try to place texts of both sorts in patterns of what has been and what will be, and these patterns are themselves compositions. The law is thus at its heart an interpretive and compositional—and in this sense a radically literary—activity.”¹⁹ Likewise, the circulation of law and popular culture ensures that cultural representations of legal problems bring new images and ideas that can become the bases for future legal thinking. Filmic images are the cultural common law.

For White, translation is about relationships and the relationships that language itself requires; “it is the art of facing the impossible, of confronting unbridgeable discontinuities between texts, between languages, and between people.”²⁰ White sees justice and law as engaged in the same fundamental activity as translation, that of “talking about right relations” between languages and between people.²¹

Law’s Violence

Every legal order must conceive of itself in one way or another as emerging out of that which is itself unlawful.

—Robert Cover

The scenes of legal violence in the origins of the state, and the founding of the United States in particular, have been a source of interest and anxiety within legal theory and practice. Theorists have long observed both the inherent violence of law and the anxiety this paradoxical fact occasions.²² Law requires violence for its authority and yet it purports to be authoritative and legitimate precisely in its ability to displace violence as the primary form of authority. As Robert Cover has said, “Neither legal interpretation nor the violence it occasions may be properly understood apart from one another.”²³ Though primarily concerned with legal interpretation, Cover’s assessment applies with equal force to any social institution: “A legal world is built only to the extent that there are commitments that place bodies on the line.”²⁴

Perhaps the classic statement of law’s dependence on violence is from Hobbes, who defined law as simply commands that are backed by force.²⁵

Whereas Hobbes envisioned the state of nature as anarchy and constant war, the state itself he saw as simply the productive organization of violence and power. It requires the “terroure of some Power” to make men observe law’s commands and “feare of punishment” to perform their covenants.²⁶ The emergence of the state, of sovereigns and subjects, is an act of self-preservation and it brings peace only by lodging violence in a body beyond the individual. The Leviathan is erected by men conferring their power upon one man or an assembly of men, and whether the state is formed by choice or by force, the power of the sovereign is based on the same thing as the power of the individual: violence, terror, and domination. Hobbes makes this explicit when he notes that if it were true that covenants that proceed from fear of death or violence are void, then “no man, in any kind of Common-wealth, could be obliged to Obedience.”²⁷ As Martha Umphrey puts it, Hobbes imagines that “the escape into civilization leads only to a more mediated form of terror.”²⁸

Likewise, John Austin, in his influential articulation of legal positivism, takes his definition of law from Hobbes. Law for Austin is a command, and a command is by definition that which is backed by violence. “If you are able and willing to harm me in case I comply not with your wish, the expression of your wish amounts to a command.”²⁹ For Austin, the superior or sovereign that makes law gains this power through might—“the power of affecting others with evil or pain, and of forcing them, through fear of that evil, to fashion their conduct to one’s wishes.”³⁰ As Austin poetically points out, while might usually resides in the sovereign, it also “slumbers in the multitude.”³¹ It is the power and might of the slumbering multitude, in fact, that makes the state’s power and legitimacy so fragile.

H.L.A. Hart vigorously tried to defend a position that law was not just coercive orders, but rules whose primary appeal was “not to fear but to respect for authority.”³² But as Hart himself admitted, the nature and legitimacy of that authority is obscure. In a circular sort of logic, general or fundamental rules—those meta rules in representative political systems that govern lawmaking and confer authority to legislate—themselves legitimate the state because they are not merely the terms by which society obeys the sovereign, but “are *constitutive* of the sovereign.”³³ But this rhetorical haven of rules still can’t save us from a system founded on violence.³⁴

Law’s violence is not only a problem for law, inasmuch as law can be thought of as a promise to protect us from violence, but it is also a paradox. As Austin Sarat has articulated it: “Law without violence is unthinkable,

yet if law were to be no more than violence it would not be law at all. . . . But the violence on which law depends always threatens the values for which law stands. Some of this violence is done directly by legal officials, some by citizens acting under a dispensation granted by law, and some by persons whose violent acts subsequently will be deemed acceptable.”³⁵

When the violent acts that are subsequently deemed acceptable by the law are the acts that help found and maintain the state, whose sovereignty legitimates the law, then the paradox of law’s violence is most vivid.

Perhaps nowhere is the paradox of law’s violence and the violence of legal interpretation so clearly instantiated than in Justice Marshall’s opinion in *Johnson v. M’Intosh*. As noted earlier, Marshall had to decide who owned the land in dispute: the plaintiffs who purchased the land from the Piankeshaw Indians or the defendant who received a land grant from the United States Government. But of course this case was about much more than a dispute about a particular piece of property in Illinois; it was about the right of the new United States to the vast expanse of property that it did not or could not win entirely by conquest or treaty and about the centrality of the right of property in the law and economy of the growing state.

Marshall justified the territorial claims of the United States and denied any property rights for Indians by hinging his opinion on the principle of discovery. He held that while the Indians chiefs who sold their land were in rightful possession, they did not own the soil because such ownership conflicted with the claims of the United States, and the first principle of property is that absolute title cannot exist in two different people or two different governments at the same time.³⁶ It was this principle of discovery that was recognized by the European nations competing for the newly found continent and that was used to regulate their conflicting ambitions. “It was a right which all asserted for themselves, and to the assertion of which, by others, all assented.”³⁷ Once asserted and recognized by the European powers, the primary rights that flowed from discovery were the exclusive rights to title and to appropriate the lands occupied by the Indians, by treaty, purchase, or conquest. Here was the legal justification for violence—that discovery gives the right to appropriate through conquest—but it was circular and paradoxical because the sovereign law that provides for discovery, the principle upon which violence is legally allowed, is itself founded and legitimated through the violent conquest that creates the state and the law.

In *M’Intosh* Marshall narrates the “history of America, from its dis-

covery to the present day" in order to prove the "universal recognition of these principles."³⁸ He recounts how each of the European powers made acquisitions in America on the basis of discovery and grants from their own sovereign, and nowhere was this more true than of England, whose monarchs gave numerous grants to settle colonies. The 1609 charter for Jamestown, for example, granted "in absolute property, the lands extending along the seacoast four hundred miles, and the land throughout from sea to sea."³⁹ After quoting the grants of land that accompanied many other charters from the crown, Marshall concludes: "Thus has our whole country been granted by the crown while in the occupation of the Indians. These grants purport to convey the soil as well as the right of dominion to the grantees. . . . It has never been objected to this, or to any other similar grant, that the title as well as possession was in the Indians when it was made, and that it passed nothing on that account."⁴⁰

The idea that these charters to faraway lands could have been void or nullified by the claims of those already in possession of the land is, according to Marshall, an absurdity. It is an absurdity, Marshall almost admits, not because of any principle of law but because the audacious claims in fact succeeded and hence became the law. "However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear; if the principle has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it; if the property of the great mass of the community originates in it, *it becomes the law of the land, and cannot be questioned.*"⁴¹ As Jedediah Purdy notes in his excellent analysis of *M'Intosh*, it is problematic as a property law case precisely because of its open endorsement of colonial violence.⁴²

The legal violence of *Johnson v. M'Intosh* is both in the word and in the act. It is violent in its rhetoric and legal interpretation, insisting as legal opinions always insist, on a particular way of understanding the law that guides the court's judgment, and suggesting, as legal opinions sometimes suggest, that there is no alternative to this understanding of the law. Indeed, *M'Intosh* reads as if there were no other options than to decide the case based on the doctrine of discovery at the very same time that it acknowledges the audaciousness of the result. There were no other legal options or outcomes available not because law or history foreclosed them, but because Marshall, in his opinion, makes it so—the legal right of the state to land in possession of Indians is asserted and created by Marshall himself in the act of writing for the Court, and it cannot be questioned. The instability in the relationship between law and violence surfaces and

is violently repressed by Marshall. It exists as an echo. The law asserted in the opinion is justified in part because it has never been doubted, because the opinion insists that the story it tells is one of uniform agreement on the rights that flow from discovery, and where there is doubt, it is justified by the violence of conquest itself. "The United States, then, have unequivocally acceded to that great and broad rule by which its civilized inhabitants now hold this country. They hold, and assert in themselves, the title by which it was acquired. They maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest; and gave also a right to such degree of sovereignty, as the circumstances of the people would allow them to exercise."⁴³

But of course Marshall's narrative was not the only story that could have been told, even if the outcome of *M'Intosh* was overdetermined by the time the case was decided. There were options other than the doctrines of discovery and conquest that Marshall could have used to decide the case, options that might have been easier to justify. For example, Phillip Frickey, in his classic article on Marshall's Indian Law Trilogy,⁴⁴ locates a deep tension in *M'Intosh* between the imperatives of colonialism and expansion on the one hand and the tenets of liberal legalism and American constitutionalism on the other.⁴⁵ Similarly, Hope Babcock, in her critique of *M'Intosh* and the rest of the Trilogy, argues that for two hundred years European powers had been operating under the theory that the preemptive right of the discovering nation was not to claim title to all tribal land but to enter into treaties with the native tribes.⁴⁶ This argument is partly supported by historians such as Joseph Ellis, who has documented the efforts of the founding generation to reconcile expansionism with republican values and the rights of Indians. While Ellis notes that the prevailing view among Americans in 1789 was that the United States owned everything east of the Mississippi by right of conquest and that most endorsed the implicit imperialism of the push of white settlers westward, he also shows that George Washington was convinced by his secretary of war Henry Knox that the "conquest theory, which presumed that all Indians east of the Mississippi were mere 'tenants at will,'" was a "gross violation of the republican principles" for which they had fought. It was Knox's and ultimately Washington's position that Indians should only be divested of their lands through purchases by or treaties with the federal government.⁴⁷ Despite the fact that the tide of settlers "swept all treaties, promises, excellent intentions, and moral considerations to the far banks of history,"

Ellis's history at least makes clear that conquest theory was not the only law under which the United States operated when it came to Indian land; despite the ambitions of the fledgling nation, they would likely have been incapable of complete conquest had it come to that.⁴⁸ Moreover, less than a decade later in the last of the trilogy of Indian cases, Marshall himself retreats from his position on discovery that he staked out in *M'Intosh*.⁴⁹ But from the perspective of Indian law it was too late; the damage had been done, the legal fictions had grown into legal facts and become law.⁵⁰

Marshall's reliance then on the doctrine of discovery can be seen as a classic example of legal translation as White envisions it, law translating law, the giving of new life to an old idea by placing it in a new context. But Marshall's opinion also supports Cover's insistence that legal interpretation is not nearly so tame as White suggests, that it is violence that makes legal interpretation possible, violence that gives Marshall the authority to make a judgment and assert it to be the law, and violence that enables him to disregard the other competing facts and narratives about the federal government's relationship with Indian tribes. *M'Intosh* is law used to reduce rather than proliferate the possibilities of normative meaning, law in its imperial role rather than its peace-keeping role, law at its most violent.⁵¹ This is the violence of the word that also justifies the violent acts the decision condoned and occasioned.

The violence in Marshall's opinion, however, resides not only in the words of the court, words that proclaim the undiluted power and legitimacy of the state relative to the Indians, but in the acts the words perform and validate. The words get their legal authority from violent acts previously done to Indians, acts which consolidated state power and empowered state law. The words also confirm that the law may occasion future violence as well, violence which will be subsequently condoned. Marshall puts it bluntly: "The title by conquest is acquired and *maintained* by force."⁵² In other words, the violence in the making of the state empowers its courts to make commands backed by violence, commands that continue to do and authorize violence.

One reason law's images circulate so easily in popular culture is that law tells its stories in cultural terms as well as legal terms. Marshall builds his case for the deterritorialization of the Indians not only by narrating the legal doctrine of discovery but by portraying the "character and habits" of the Indians themselves, a character which made the recourse to violence inevitable. In many respects Marshall writes the opinion as a mythic western romance, with brave and fierce Indians admired for their indepen-

dence but who ultimately succumb to the imperatives of the civilized state and manifest destiny, yet pass on a native claim to the land.⁵³

But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence.

What was the inevitable consequence of this state of things? The Europeans were under the necessity either of abandoning the country, and relinquishing their pompous claims to it, or of enforcing those claims with the sword, and by the adoption of principles adapted to the condition of a people with whom it was impossible to mix, and who could not be governed as a distinct society, or of remaining in their neighborhood, and exposing themselves and their families to the perpetual hazard of being massacred.⁵⁴

Richard Slotkin, in his masterful book on the mythology of the American frontier, articulates the power of the land in the early American mythic narratives, where the land was both a source of terror, potentiality, and violence. Exploration of the new land was one necessity for the colonists and fighting Indians over it was another. “Later, the sons of these emigrants strove to justify their title to the land they took for their own.”⁵⁵ Marshall’s opinion in *M’Intosh* is part of the myth-making about the American West, its cultural influence on par with its legal force.

Law’s Violence as Western: *Deadwood*

No law at all in Deadwood . . . is that true?

—David Milch, *Deadwood*

Andre Bazin has called the western the “American film par excellence” because it “was born of an encounter” between the mythology of the nation’s founding and a unique form of expression—the cinema.⁵⁶ Their origins were almost simultaneous and both have continued to thrive together. Tess Gallagher concurs in her genre study of the western: “In fact, so popular were the Westerns during cinema’s formative years (1903–1911) that it may well be that, rather than the cinema having invented the West-

ern, it was the Western, already long existent in popular culture, that invented the cinema. Picturesque scenery, archetypal character, dialectical story construction, long shots, close-ups, parallel editing, confrontational cross-cutting, montaged chases—all were explicit in the Western before the Lumieres cranked their first camera.”⁵⁷

Westerns have consistently translated Americans’ fascination with and ambivalence about the country’s founding as well as law’s own precarious relationship to violence, creating a visual afterlife of law’s violence that continues to prove gripping, telling the story in a new way each time. As Bazin says, “The Western does not age.”⁵⁸ And yet it goes on living, because it is also a temporal translation, and in each manifestation it looks back at a similar past through the eyes of a different present. Its stock tropes are those that form the mythic vocabulary of the common past: that elongated moment in which settlers forged into the frontier to violently wrest the land that was occupied by the Indians, but which was (as Marshall only later confirms in *Johnson v. M’Intosh*) rightfully theirs. It is the effort to civilize a powerful wilderness, to fulfill the first principle of discovery through the imperatives of Manifest Destiny and Empire.⁵⁹

Thus the coming of civilization and the development of law are central themes of the western, but the western hero, the man who tames the wilderness sufficiently that law can enter, is not a part of civilization or law. The western hero, like the American hero he embodies, is a liberal individualist with a moral code who is part native and part civilizer, he has conquered the wilderness but neither has he been domesticated by the cosmopolitan and authoritarian East.⁶⁰ He has evolved from the Hobbesian state of nature but he is neither of nature nor of the state. He protects the fledgling community and promises justice, but is not part of the community or bound by its rules. He is violent because he has to be not because he likes to be. In fact, he is incompatible with the state because of the very qualities that allow him to usher in the state: strength, conscience, and an individual liberty that would not submit to the institutionalization of the rule of law. As Manderson points out, the Western hero is kin to the superhero, for each provides justice outside the constraints of the law. “It is their character and their power rather than their role or their training or their community that ensures that they are capable of bringing justice where law and society are at their most impotent.”⁶¹ Because the western hero is an outcast in the world he helps to create, Bazin argues that in the western “epic becomes tragedy, on the appearance of the first conflict between the transcendence of social justice and the individual character of

moral justice, between the categorical imperative of the law which guarantees the order of the future city, and no less unshakeable order of the individual conscience.”⁶²

So westerns translate the state’s own use of violence in order to gain and maintain legitimacy and they depict the dependence of law on that fragile legitimacy, but the translation makes something new; its afterlife evinces a deeper ambivalence about both because there is a fundamental conflict between the classic western narrative and the classic western hero. While westerns often romanticize the hero, they can be skeptical or outright hostile toward the state that the narrative enables. In this sense, westerns are part of a politically conservative genealogy that begins in liberal thought and runs through the present. The circulation of western translations of law has been profound and influential, and is evident in countless examples of law and culture, from the style and policy of the Reagan presidency to recent Supreme Court cases like *District of Columbia v. Heller*, which mirrors some versions of the western narrative, valorizing, and indeed constitutionalizing, the individual with a gun over the needs and rights of the community.⁶³ One sees vividly in *Heller* the power of the images that circulate in law’s visual afterlife to influence the law. *Heller* takes up an idea developed in the Western, that violence “provides us with conditions for self-definition,”⁶⁴ and circulates it back into law.

Deadwood, which premiered in 2005 and ran for three seasons, tells the story of a frontier Dakota camp as state governance and order encroach. Law is something feared and desired. Like one of the archetypal westerns, *The Man Who Shot Liberty Valance*, *Deadwood*’s translation of law’s violence is one which gives new life to a problem of irresolvable anxiety. Just as in *Liberty Valance*, law’s eventual stability is seen (and unseen) to be predicated on illegal acts of violence and a lie, in *Deadwood* the coming of law is paved by unspeakable but seen violence.

Private violence is the reigning visual motif in *Deadwood*, as money or violence are the chief means of solving all disputes and most people don’t have money. Violence and death are not only a visual fixation for the series but a practical problem for the town. The practical problem is solved by the town’s “Chinaman,” Mr. Wu, who for a small price will dispose of the dead bodies by feeding them to his enormous hogs. The implication is that this town has not been civilized yet by law and the lawlessness is so profound that even after the victims of violence are dead, still more violence awaits them.

I want to focus on two telling scenes in Season 2 in a two-part epi-

sode entitled "The Lie Agreed Upon" in which Al Swearengen and Seth Bullock play out the problem of law's predicate violence. Swearengen officially runs the Gem Saloon and unofficially runs the camp. He is smart, ruthless, and oddly likeable. He is also desperate to protect his power in the face of competitors in town and the Dakota governor in Yankton. Bullock has come to Deadwood to open a hardware store with his partner Sol Star. Swearengen, who is a consummate political strategist, thinks they might be able to prolong their autonomy by giving the appearance of self-governance and lawfulness. To that end, Swearengen arranges to have Bullock "appointed" sheriff of the camp, a role Bullock both desires and repudiates, and a version of the role he had abandoned in Montana as the series opens. Yet once he accepts his reprised role as sheriff, he endows it with all his fussy self-righteousness and rectitude. It is a performance of authority that Swearengen finds politically useful and personally unbearable.

In *Deadwood* we have two juxtaposed translations of the western hero, each with a different code, neither of which fits the hero role. But then, this western is made in an era without heroes, when the democratic state and capitalism have together reached new heights of imperial violence, but seem inseparable. So it is not surprising that Bullock and Swearengen are both businessmen and keepers of the law in Deadwood; but they are portrayed as very different types who have antipathy and only grudging respect for each other. On the one hand, Bullock is the silent moralist, the upright entrepreneur, and the ambivalent but self-righteous law man. In many ways he presupposes the bureaucratization of law and violence in the police; he is impersonal, angry, quiet, as if all his energy goes to suppressing his own internal violence. Swearengen, on the other hand, is as expulsive as Bullock is retentive. He is a relentless talker, power-broker, and sleaze merchant. Unlike Bullock, he feels no need to reign in his violence, but neither does he unleash it without reason. Like the state and capitalism, these two appear to need each other despite their incompatibilities. As if to reinforce visually the sordid affairs of the town, there are very few epic shots in *Deadwood*, no horizons and open spaces. The one consistently elevated shot within the show is from the balcony of the Gem Saloon, from Swearengen's perspective. The camera mainly stays within the claustrophobic rooms or oppressively muddy thoroughfare of the town.

As season 2 opens, the town is concerned about its ability to protect its private property. In a revision of the appropriation of Indian land in

M'Intosh, the white settlers in Deadwood have set up a system of land grants outside the formal law and they are concerned that if they are incorporated into the Dakota Territory their land grants will not be respected. Their land grants are not only extralegal, but illegal, as Deadwood is an unauthorized settlement in Indian Country, an area reserved to Indians under treaty with the federal government. In this sense the scene and the series are the backstory to *M'Intosh*—these are the settlers who make each Indian treaty unenforceable and whose lust for property later requires Marshall to deny the prior tribal property claims.

The season begins with Bullock consummating his affair with the wealthy widow Alma Garret in her hotel room and across the thoroughfare Swearengen is out on the balcony of the Gem Saloon. Swearengen is in a foul mood, having just learned that the Dakota governor plans to divide the area around Deadwood into three counties, each with an outside commissioner, presumably immune to Swearengen's bribes and threats. He watches with disgust as telegraph poles are being erected in town; law and civilization are galloping toward them with a code he finds both unfamiliar and reprehensible. Swearengen says, "Messages from invisible sources. What some people think of as progress." As his man Dan later adds, "America is coming, and they are lying, thieving cocksuckers." While Swearengen is out on his balcony, Bullock emerges from the hotel looking self-satisfied and important. In his present state of mind, it is more than Swearengen can bear, and he says to Dan, "Self-deceiving cocksucker I am, I thought when America took us in Bullock would prove a fucking resource. Look at him, striding out like some randy, maniac Bishop."⁶⁵ And then louder, he taunts Bullock below for his officiousness and for his visit to the Widow Garret.

Bullock later returns to the Gem Saloon to confront Swearengen, who simultaneously appeases and provokes him. Swearengen keeps talking, he has business to conduct, business more urgent than Bullock's wounded dignity. He wants to know if Alma Garret will reinvest the money she is making on her gold claim in the town, and he needs Bullock's help with the impending threat of government.

Swearengen: But does she cast her lot with the camp, furnish others here a chance to develop what they got, to hang on or even prosper?

Bullock: You pie-faced cocksucker. *Get in here and account for your insult.*

Swearengen: Or, with you at her ear—among other points of entry—instead of doing your civic duty, does she ship her fucking loot to Denver?

Bullock: Civic duty? Opposed by her own and her dead husband's family, to put her assets at play in a camp with no law or government worth the name?

Swearengen: See as here where she lives and struck lucky, civic duty? Yeah. And it's time for her and some others to quit their fucking shirking. Yankton's making its move. Ah, the fucking thing!

Bullock: Meaning what? "Yankton's making its move?" Without more insults.

Swearengen: We're getting ass-fucked. Carved into counties, but not one fucking commissioner coming from the hills.

Bullock: How do you have this information?

Swearengen: From the governor himself in a pricey little personal note . . . Now, I can handle my areas, but there's dimensions and fucking angles I'm not expert at. You would be if you'd sheathe your prick long enough.

Bullock: Shut up.

Swearengen: And resume being the upright pain in the balls that graced us all last summer.

Bullock: Shut up, you son of a bitch.⁶⁶

Talk has run out and Swearengen sighs, accepting the fight to come. Slowly, deliberately, and in silent close-ups, Bullock snaps off his badge and takes off his gun. He puts both of them neatly on Swearengen's desk. His hand lingers on them, his back to Swearengen. Both of them face the camera, Swearengen in the background and Bullock in the foreground. Visually we are provided with distinctions, between two men, two different versions of the western hero—one the individualist and brutal entrepreneur who settles the edges of the known world but whose tactics are incompatible with settled law; the other the man who translates between the past and the future, the one who understands he has to take off his badge to do battle over a personal insult. It is not, of course, that the man with the badge is incapable of violence, but he understands that there are rules which distinguish legal and illegal violence.⁶⁷ Thus we have the second visual distinction, between the same man with and without a badge and gun. Then Bullock swivels around and they begin to fight, eventually falling over the balcony and into the mud, bloody and bruised. The fight ends when Swearengen's men start shooting into the air and the stagecoach arrives carrying a fresh batch of whores and Bullock's new wife (his brother's widow) and stepson/nephew.

Bullock returns later to retrieve his badge and gun, backed by Calamity

Jane and Charlie Utter. Everybody is armed; even the whore with the heart of gold, Trixie, has a rifle. Tensions are high and Bullock yells for Swearengen to come out. Swearengen interrupts his monologue about the confusing political situation, delivered during a blow job from Dolly the whore, to go down and meet Bullock. He refuses any weapons and walks out extending Bullock's badge and gun. Swearengen seems to know that Bullock has considered leaving the camp with the Widow Garret, and gives a conciliatory speech:

I offer these. And I hope you'll wear them a good long fucking time in this fucking camp, whoever's fucking thumb we are under. And where it come to me just a few moments ago that the Rev. Smith—may he rest his soul—he was found on the road apparently murdered by heathens just some months ago. What he said on the subject of you, “Mr. Bullock raises a camp up, and I hope he'll reside with us and improve our general fucking atmosphere for a good long fucking time, even with all the personal complications and fucking disasters that we all fucking have, and where running away solves absolutely fucking nothing.”⁶⁸

Swearengen has conceded to the coming state, as epitomized by the badge and gun of the sheriff, as a necessary evil, but he still wants Bullock on board so that as they become incorporated into the state they can protect their property and profits.

The last scene of the episode is one that firmly and self-consciously links capitol to the state. A. W. Merrick, the town's newspaperman, wants a true account of the conflict between Bullock and Swearengen to print in the paper, and as he follows Swearengen up to his office over the saloon, Swearengen teases him about how one strand of the story would be about the economic motives for the fight, but the other would be about “pleasure beyond gain.”

Merrick: A more elevated perspective would construe our conduct as white men to be enacting a manifest destiny.

Swearengen: Whereas the warp, woof and fucking weave of my story's tapestry would foster the illusions of further commerce, huh?

Swearengen lays down on his bed, and begins to dictate the article to Merrick. As he speaks the camera cuts to Bullock walking slowly back to the

house he has built for his family as the camp falls into darkness. By Deadwood standards, it is a scene of extreme domestication. Both protagonists are heading to bed, having avoided an explosive and fatal encounter by paying their respects to the “implements and ornaments” of the law. The suggestion is that the law does not displace violence, it domesticates it. It makes the world safe for markets.

Swearengen: “Tonight, throughout Deadwood heads may be laid to pillow assuaged and reassured, for that purveyor for profit of everything sordid and vicious, Al Swearengen, already beaten to a fare-thee-well earlier in the day by Sheriff Bullock, has returned to the Sheriff the implements and ornaments of his office. Without the tawdry walls of Swearengen’s saloon the Gem, decent citizens may pursue with a new and jaunty freedom all aspects of Christian commerce. In which connection, we particularly recommend—” There you’d throw in the names of a few businesses gave you good-sized adverts, huh?

Here Swearengen’s speech is interrupted as Bullock reaches the door of his house to find that his wife has waited up, to see whether he was going to come home or choose to leave town with the Widow Garret. The dialogue is momentarily synched with the image, which gives this scene within a scene more intimacy. Bullock and his wife talk quietly and formally with each other, but in a way that acknowledges that Bullock has severed his relationship with Alma Garret and will do what is right by his family. He places his recovered gun and badge by the side of the sleeping boy so he’ll know that Bullock has retained his title and his masculinity, and he follows his wife upstairs. As they climb the stairs we hear Swearengen’s voice again as the episode ends.

Swearengen: “A full fair-mindedness requires us also to report that within the Gem, on Deadwood’s main thoroughfare, comely whores, decently priced liquor and the squarest games of chance in the hills remain unabatedly available at all hours, seven days a week.”⁶⁹

This closing scene is noteworthy because it is a narrative transition from private violence (the fight) to the seen but contained violence of the state (the returned implements and ornaments of the sheriff’s office) and to the unseen violence of capitalism (the town itself). We see Swearengen acting as a translator, speaking the story for Merrick, translating the events

of the day and their complex backstory into a “true and decent” newspaper account. It shows the ways in which within the show Swarengen is also the translator for the viewer. This is made especially evident through the use of the voice-over, for within the frame of the episode he becomes our narrator, his voice speaks in a long-ago present about the imminent future, about a state wrought by violence that comes to make the market safe. In addition, his panoptic view from the balcony of the Gem Saloon affords him a visual power others don’t have. From there he translates the motives of the unseen state; the politics of the Territory; the doings within the camp; the laconic Bullock and the speechless Wu (who tellingly knows two words of English—Swarengen and cocksucker, which is the name of everyone else).

In translating the state’s violent founding, *Deadwood* visualizes the gaps that were evident in *Johnson v. M’Intosh*. Within the context of a violent community we see the domestication necessary for law and capital, precisely the domestication that Marshall found Indians incapable of and which was used to justify the appropriation of their land. Where the Supreme Court found the establishment and continued existence of the nation justified the means used to establish it, *Deadwood* sets the legal story in the moment of its violent making and makes clearer the multiple modes of violence needed to conquer the land: after a settler family is murdered on the road (probably by road agents) Swarengen offers fifty dollars for the head of an Indian and keeps the severed head in a box in his office; the women are conspicuously, sexually used and abused as part of the “cunt and whiskey” business; the Chinese, the blacks, and Sol Star, the “Hardware Jew,” are all vividly denigrated. We see the costs and violence in the making of the state. Yet the rhetorical gaps of *M’Intosh*, the inability of Marshall to fully justify the property claims by the United States, still resist translation.

There remain gaps in law’s visual afterlife. For example, unspoken and unseen in *Deadwood* is the way the entire population of the town has been, in essence, deputized to take Indian land by the very absence of the federal government, which had previously agreed not to settle the land. They settle the land illegally but their unlawful actions are implicitly sanctioned by the government. They continue to resist the state that has enabled their independence and to denigrate the law that protects their profits. Law’s violence and ambivalent legitimacy go on living in the translations of *Deadwood*, but they are masked anew in other ways, most notably by the imperatives of capitalism. As Rebecca Johnson points out in

her essay on Deadwood, there is indeed law in the town, "it is the law of power, economy, and the law of the market. Deadwood may be an illegal camp on Indian land, but the people of Deadwood clearly function in the shadow of a binding economic order in which settler-society understandings of exchange, property, and contract continue to operate."⁷⁰ In contrast to Johnson's view that Deadwood makes capitalism and the civilizing effects of economic development feel inevitable,⁷¹ Patrick McGee, in his Marxist rereading of the history of the western, finds in Deadwood a deconstruction of capitalist culture and a "vivisection of the origin of capital and the damaging effect the war for wealth has on any kind of human relationship."⁷² My concern is less with deciding where Deadwood comes down with respect to capitalism, and more with seeing how its translations of law, violence, property, and the liberal self circulate. In Deadwood, law's visual afterlife makes vivid the connections not only between *M'Intosh* and *Heller*, between the state, the individual, violence, and the market, but also the interdependence of legal and cultural interpretations.

Western Science Fiction: *Serenity*

Can I make a suggestion that doesn't involve violence, or is this the wrong crowd?

—Joss Whedon, *Serenity*

I want to touch finally on the sci-fi subgenre of the futuristic western, because I think it provides a fruitful contrast to the western's translations of law's violence and state legitimacy projected into the past. In the western science fiction movie, the fantasy of lawlessness and anxiety over law's violence are instead projected into the future, which gives the genre a different mood, less elegiac and nostalgic, less a repetition of the origin myth.⁷³ Despite the differences of mood, however, there are striking similarities as each seeks to account for and critique its own present, to find a frontier and journey into the unknown, and to make sense of the nature of the state, its limitations and the law it legitimates.

Science fiction as a genre develops out of many of the same influences as the western: mythic narratives of western culture, pulp literature, and comics, although it was more profoundly influenced by the Industrial Revolution, taking advanced industrial society as one of its primary themes.⁷⁴ Like the western, science fiction evolved with the cinema itself, most notably in Melies's early voyage films, such as *A Trip to the Moon* in 1902, *The Impossible Voyage* in 1904, and *20,000 Leagues Under the Sea* in 1907.⁷⁵ But

science fiction cinema emerged more fully in the Machine Age following World War I, with Fritz Lang's *Metropolis* in 1927 as a classic "expression of post-war angst and technological anxiety" that in many ways continues to epitomize the genre.⁷⁶ The serials that flourished in the 1930s were often sci-fi- or western-inflected, and a few even mixed the two genres.⁷⁷ But it was in the atomic age that followed World War II that science fiction became a "critically recognized genre" and a mainstay of not only movie theaters but also early television,⁷⁸ exemplified by long-running series such as *The Twilight Zone* and *Star Trek*.

Science fiction is so named because one of its defining themes is the social and political anxiety generated by the use and abuse of science and technology. Ironically, the genre is among the most popular and lucrative in part because advances in cinematic technologies have allowed science fiction films to capitalize on dazzling visuals and special effects. Like the western, science fiction often sets the story outside the current society, either in the future, or on other planets.⁷⁹ Also like westerns, the heroes of many science fiction films are often themselves on the margins of human society or marginally human; they are renegades, don't fit in, are often outlaws.⁸⁰ While there are many different stock narratives within the genre, each dealing in some way with the social concerns of its time,⁸¹ my focus is on those films that portray and translate the breakdown of the state and its monopoly on violence, a rupture in the social order, or the fantasy of lawlessness. In this post-apocalyptic subgenre I would put films like *Planet of the Apes*, *Mad Max*, *The Road Warrior*, and even *Star Wars*.

In particular I want to showcase *Serenity*, a 2005 film written and directed by Joss Whedon (and spun off from his television series *Firefly*), which was consciously modeled on the classic western *Stagecoach* and billed as a "space Western."⁸² In a sense the movie is a translation of a western into science fiction. It is also, like the western, a visual translation of law's violence, although less about the domesticated violence of capitalism evident in *Deadwood* and more about the bureaucratized and mechanized violence of colonialism. The movie is set 510 years in the future in a new solar system that has been "terraformed" to sustain human life after people overwhelmed the resources of earth. The story revolves around the captain and crew of a cargo space ship named *Serenity*. The captain, Malcolm Reynolds (called "Mal"), had been a volunteer in the Independent army, but after losing the war he became a mercenary and a renegade. The powerful and authoritarian Alliance—an American-Chinese interplanetary superpower—won the war and controls the central planets where they

use technology, indoctrination, and violence to create a utopia of “a better world” and a “true civilization.”

The movie opens in an Alliance classroom where the teacher is telling the history of their new solar system, the dangerous outer planets, and the savage and barbarian Reavers. In the first scene we are introduced to the “frontier,” the outer planets that have not been civilized, and the “savages” that partly populate the frontier. They are the stuff of campfire stories for Alliance children, but among the crew of *Serenity* they are a real threat. Mal and his crew must negotiate dual threats: “on the one hand, the Alliance, with its enforced adherence to arbitrary laws, and, on the other, the Reavers, feral humans unrivaled in their anarchy and bestiality.”⁸³ Unlike the myth of the western frontier, which despite its inhospitable landscape offered the promise of property and freedom, the frontier in *Serenity* is the farther reaches of space: cold, airless, and lethal, offering no promise of a better future. The crew often refers to it as “nothing” or “the black.” The other children in the classroom can’t understand why the other planets don’t want to be safe and civilized. A student named River responds, guiding the audience’s understanding of the film. Within the film, she also re-orientates the teacher’s narrative for her classmates, translating it into a story about colonialism. “We meddle,” she says. “People don’t like to be meddled with. We tell them what to do. . . . We are in their homes and in their heads and we haven’t the right. We’re meddlesome.”⁸⁴

River turns out to be “a reader,” a psychic, who the Alliance imprisons and trains to be a human weapon for them. She is a classic sci-fi character, the human turned into machine. She undergoes “neural stripping,” which makes her mentally unstable and physically powerful, but the process is not completed before her brother Simon rescues her and they take refuge aboard *Serenity*. Mal and his crew don’t realize who they are harboring, or that an “operative” for the Alliance is searching for River. The operative is a brutal, cold, methodical killer, willing to do whatever it takes for a “better world.” He is a true believer in the Alliance cause of a safer universe and villainous because of it. The operative embodies human violence made clean and technical. Mal, in contrast, is a skeptic and a reluctant pioneer, his ship is his only home and the crew his only family.⁸⁵

Despite the landscape of space and the violent technologies of the Alliance and its operative, in the intimate details of *Serenity* there is more of the visual iconography of the western than of science fiction. Mal’s voice and clothing, as much as his character, are in the tradition of the western hero. He wears a leather holster and gun, speaks in a western idiom, has

his own moral compass, but will kill when he needs to. Like Bullock in the opening scene of *Deadwood*, Mal kills a man to keep him from being torn apart by Reavers. It's not exactly a legal killing, but it's a merciful and moral one. There are many camera shots that speak in the cinematic idiom of the western as well: a showdown shot from close behind Mal, his gun and holster foregrounded, a bar-room brawl, a chase scene that feels more western than galactic (even though its vehicle is a hovercraft rather than a stagecoach).

In *Serenity*, not only is the western itself translated into the future, but like the western, it seeks to translate into a visual popular vernacular key legal scenes and preoccupations. Here the violence of the state's founding moment and law's paradoxical dependence on violence depicted in the western becomes the violence in the maintenance of the state and of empire; the dangers of utopian dreams and progress narratives; an imagined social space where the state's law is violent and less predictable than the violence of the lawless Reavers. In *Serenity* we see and must confront not only the costs of the state, but also of empire building in the name of progress. Foregrounded in this translation is not the market, but colonialism, and the desire of a superpower to bring civilization to those they do not understand. *Serenity*, in translating the western itself, gives it a sci-fi afterlife in which we both appreciate and question afresh the western's characters and world-making categories. For example, it shares with the classic westerns a suspicion of the state and conventional social order, but adds a postcolonial sense of the injustice done to others in the name of civilization. It shares with *Deadwood* a twenty-first-century rejection of heroes. In this film a hero is "someone who gets other people killed."⁸⁶ *Serenity* replaces the lone western hero, the liberal individualist, with a small community, a chosen family. The crew of *Serenity* is a family of mercenary outlaws on the "raggedy edge" of the solar system; they seek freedom from the authoritarianism of the Alliance but they do not need or want the individual freedom offered by classical legal thought. Modeled on the Fordian community of *Stagecoach*,⁸⁷ this community goes even farther to create a workable social order, abiding by its own set of norms and values, of which trust is primary. It is not perfect, but it works well enough that it helps each of its members become more self-realized. Whether in a stagecoach or a spaceship, they are literally and figuratively on a journey together.

Serenity is skeptical of the imperialist and progressive state, but it is equally skeptical of idealism and utopianism. It shows us that living with violence, even legally sanctioned violence, is probably better than trying

to create a world without violence. The Reavers, we learn toward the end of the movie, were once ordinary humans on a planet named Miranda who had an unpredictable reaction to a drug used by the state to make the population less aggressive and happier.⁸⁸ When the crew of *Serenity* land on Miranda, they find a planet filled with sharp light and corpses. They also find a holographic report about what happened:

"There's been no war here, no terraforming event....It's the 'Pax'—the G-32 Paxilon Hydrochlorate—that we added to the air processors....It was supposed to calm the population, weed out aggression.... It worked. The people here stopped fighting. And then they stopped everything else. They stopped going to work, stopped breeding, talking, eating. There's thirty million people here and they all just let themselves die....about a tenth of a percent of the population had the opposite reaction to the Pax. Their aggressor response increased beyond madness. They've become—they've killed most of us; not just killed, they've *done* things. . . . We meant it for the best."⁸⁹

The Reavers, it turns out, are that tenth of a percent. They are not alien others, nor are they "like us"; they *are* us.⁹⁰ Indeed, this awareness is a potential repudiation of the legalized violence of the colonial project. As Homi Bhabha says, "colonial mimicry is the desire for a reformed, recognizable Other, *as a subject of a difference that is almost the same, but not quite*."⁹¹ While the story of the Reavers' creation re-forms them for the viewer, to be almost the same, but not quite, their story also collapses the distinction between native and colonizer. While they are clearly savage, they are just as clearly not native. They are the savage result of the imperial project itself. If anything, they embody White's theory of translation as the art of confronting the unbridgeable discontinuities between people,⁹² as a way to consider right or more just relations. In fact, it is the holographic report and the realization of its full meaning that acts as an emotional catalyst on Mal, who until then was neither a true believer like those in the law-making Alliance nor a nonbeliever like the lawless Reavers. He is complicated, liminal, and agnostic. Despite a deep antipathy to the Alliance, Mal and his crew are also culturally part of the Alliance, speaking in English and cursing in Chinese. Moreover, they depend on the capitalism that Empire feeds.⁹³ But now Mal takes a stand, saying to his crew, "They think they can make people better. And I don't hold to that. So, no more running. I aim to misbehave."

Their misbehavior is to broadcast the holographic report, so that people

know the truth about the Alliance, and to do this he turns to a young hacker named Mr. Universe, who is a subversive techie who finds freedom in his media “feeds,” in the constant stream of images and information, in the multiple frames of his postmodern life. In a comic touch, he is married to a cyborg Barbie. As Mr. Universe says, “You can’t stop the signal Mal. Everything goes somewhere and I go everywhere.” In a world in which God is dead, Mr. Universe is the high-tech substitute. He sees all. In the character of Mr. Universe, *Serenity* takes up the theme of visibility itself. It operates under the assumption that all modern communication and translation is in some sense visual. The screens in this new solar system not only project images, they see as well; the private is always public, the Alliance watches through the television screen. The screen images also send code and subliminal signals that activate their mind control over River. But in *Serenity* visibility is not just about state control and state violence. A tool of law enforcement, visibility also defies the law. As Mr. Universe makes clear, once visibility becomes pervasive enough to be universal, it cannot be totalizing or totally controlled. It becomes more like air than like law. Thus the universality of the image in *Serenity* is also what makes the image unmanageable, and once it is unmanageable it is also a source of salvation: a medium for resisting or attacking the state as well as being subjected to state observation and control. When the problem of state legitimacy and violence is translated into the future, through the idiom of science fiction, the violence is also digital and bloodless.

The final confrontation between Mal and the operative is a western scene in a sci-fi setting—it takes place on a screen. The operative has killed everyone who has sheltered or helped the crew of *Serenity*, including Mr. Universe. Mal confronts him not with a weapon, but with morality, and a debate about whether the world to come is one that will allow for competing claims of the good.

Mal: I don’t murder children.

Operative: I do. If I have to. . . I believe in something greater than myself. A better world. A world without sin.

Mal: So me and mine got to lay down and die so you can live in your better world?

Operative: I’m not going to live there. There’s no place for me there. Any more than there is for you.⁹⁴

Like the villains and heroes of westerns, there is no place for them in the world that they are ushering in. They live by different rules. And yet, in

Serenity the characters grow, and as they do they have increased agency. Mal finds he does believe in something, and discovers his own capacity for love (which is “the first rule of flying”). River comes to own and control her violent power, and she is the one who emerges at the end as the real western hero, the one who single-handedly takes out the Alliance attackers, using violence illegally but for a just cause. Unlike the western, this story of law’s violence is in the future rather than the past, so the audience doesn’t know how the story of civilization ends; we don’t know whether humans will be able to survive together or not.

Conclusion

What does the visual and temporal translation of law’s violence tell us when it is projected through westerns into the past and the future? That the just state is an oxymoron? That the just state is always founded on an injustice and maintained through sanctioned violence? That it will never escape its violent origins? That its very existence is fragile and unstable? The brilliance of *Deadwood* and *Serenity* is not that they answer these questions but that they ask them. They show us how the anxieties produced by the paradoxical relationship between law and violence continue to play out in our cultural and political lives, spurred by advanced capitalism and colonialism; how these concerns have changed and been renewed in law’s visual afterlife; and how they will continue to produce, in Benjamin’s words, an “echo of the original.”⁹⁵ Law’s visual afterlife shows us its own power—it allows us to relive a primal anxiety produced by our founding and our law, and relive it in aesthetically pleasurable ways. It also shows us the power of law’s visual afterlife to usher in new understandings of law and social order. It is often through popular visual culture that we rediscover, sometimes in all its ingloriousness, “the foundation of the law which would make order out of chaos, separate heaven and earth. But perhaps the cinema was the only language capable of expressing this, above all of giving it its true aesthetic dimension. Without the cinema the conquest of the West would have left behind, in the shape of the Western story, only a minor literature.”⁹⁶

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Notes

1. Johnson and Graham's *Lessee v. M'Intosh*, 21 U.S. 543, 577 (1823).
2. Desmond Manderson, "Trust Us Justice: 24, Popular Culture, and the Law," and Laurie Ouellette, "Real Justice: Law and Order on Reality Television," in this volume.
3. While I focus in this chapter on the ways in which popular culture translates legal problems, I do not mean to imply that this translation is unidirectional. Law is always engaged in the translation of the cultural as well. Nor do I wish to imply that "the legal" and "the cultural" are so neatly bounded and distinct as the metaphor of translation suggests. See generally, Naomi Mezey, "Law as Culture," *Yale Journal of Law & Humanities*, 13 (2001).
4. Austin Sarat and Thomas R. Kearns, "Introduction," in *Law's Violence*, 2, ed. Austin Sarat and Thomas R. Kearns (Ann Arbor: University of Michigan Press, 1993).
5. Vivian Sobchack, *Screening Space: The American Science Fiction Film* (New York: Ungar, 1987), 302.
6. Manderson, "Trust Us Justice," this volume..
7. Eugene Nida, "Principles of Correspondence" in *Translation Studies Reader*, 2nd ed., ed. Lawrence Venuti (London: Routledge, 2004), 153 [hereinafter *Translation Studies Reader*].
8. Roman Jakobson, "On Linguistic Aspects of Translation," in *Translation Studies Reader*, 138, 143.
9. Walter Benjamin, "The Task of the Translator: An Introduction to the Translation of Baudelaire's *Tableaux Parisiens*," in *Translation Studies Reader*, 75, 77.
10. *Ibid.*, 79.
11. Stephanie Harrison, *Adaptations: From Short Story to Big Screen* (New York: Three Rivers Press, 2005), 3–6.
12. Manderson, "Trust Us Justice," this volume.
13. Benjamin, "The Task of the Translator," 80.
14. *Ibid.*, 76; Homi K. Bhabha, *The Location of Culture* (London: Routledge, 1994), 321–22.

15. Bhabha, *The Location of Culture*, 326.
16. Jorge Luis Borges, "The Translators of *The Thousand and One Nights*," 105.
17. Abe Mark Nornes, "For an Abusive Subtitling," in *Translation Studies Reader*, 447.
18. James Boyd White, *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago: University of Chicago Press, 1990), 90.
19. *Ibid.*, 91.
20. *Ibid.*, 257.
21. *Ibid.*, 233.
22. See generally Michel Foucault, *Discipline and Punish*, trans. Alan Sheridan (New York: Vintage, 1977); *Law's Violence*, ed. Austin Sarat and Thomas R. Kearns; *Law, Violence, and the Possibility of Justice*, ed. Austin Sarat (Princeton, NJ: Princeton University Press, 2001).
23. Robert Cover, "Violence and the Word," in *Narrative, Violence, and the Law*, ed. Martha Minow, Michael Ryan, and Austin Sarat, 203 (Ann Arbor: University of Michigan Press, 1993).
24. *Ibid.*, 208.
25. Thomas Hobbes, *Leviathan* (Harmondsworth: Penguin, 1968), 183.
26. *Ibid.*, 117.
27. *Ibid.*, 138–39.
28. Martha Merrill Umphrey, "Law's Bonds: Eros and Identification in *Billy Bud*," *American Imago* 64 (2007): 415.
29. John Austin, *The Province of Jurisprudence Determined*, ed. Wilfrid E. Rumble, 14 (New York: Cambridge University Press, 1995).
30. *Ibid.*, 24.
31. *Ibid.*, 25.
32. H.L.A. Hart, *The Concept of Law*, 2nd ed. (New York: Oxford University Press, 1994), 20.
33. *Ibid.*, 75.
34. William MacNeil has shown how the film *Fight Club*, with its graphic, pathological, and self-conscious attention to violence, translates the "slugfest that is legal positivism: with Hart, and his rule system, in one corner; and John Austin, and his command theory, in another." According to MacNeil, no one wins because Hart cannot solve the problem of law's latent violence; he can only displace it. William MacNeil, *Lex Populi: The Jurisprudence of Popular Culture* (Stanford: Stanford University Press 2007), 44–60.
35. Austin Sarat, "Situating Law Between the Realities of Violence and the Claims of Justice," in *Law, Violence, and the Possibility of Justice*, 3.
36. *M'Intosh*, 21 U.S. at 588.
37. *Ibid.*, 573.

38. *Ibid.*, 574.

39. *Ibid.*, 577–78.

40. *Ibid.*, 579–80.

41. *Ibid.*, 591 (emphasis added).

42. Jedediah Purdy, “Property and Empire: The Law of Imperialism in *Johnson v. M’Intosh*,” *George Washington Law Review* 75 (2007): 329, 355–56.

43. *Ibid.*, 587.

44. The Trilogy consists of, in addition to *M’Intosh*, *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831) and *Worcester v. Georgia*, 31 U.S. 515 (1832).

45. Phillip P. Frickey, “Marshalling Past and Present: Colonialism, Constitutionalism, and Interpretation in Federal Indian Law,” *Harvard Law Review* 107 (1993): 381.

46. Hope M. Babcock, “The Stories We Tell, and Have Told, About Tribal Sovereignty: Legal Fictions at Their Most Pernicious,” *Villanova Law Review* (forthcoming 2010): 5 (citing Russell Lawrence Barsh and James Youngblood Henderson, *The Road: Indian Tribes and Political Liberty* [Berkeley and Los Angeles: University of California Press, 1982]).

47. Joseph J. Ellis, *American Creation: Triumphs and Tragedies in the Founding of the Republic* (New York: Vintage, 2008), 135.

48. *Ibid.*, 148–49.

49. *Worcester*, 31 U.S. at 543–46 (acknowledging that the U.S. relationship with Indians had been “a continuous process of negotiation, alliances, reconciliation, and solicitude which had always respected tribal political sovereignty”).

50. Babcock, “The Stories We Tell,” 13.

51. Austin Sarat and Thomas R. Kearns, “Making Peace with Violence: Robert Cover on Law and Legal Theory,” in *Law, Violence, and the Possibility of Justice*, 58–59.

52. *M’Intosh*, 21 U.S. at 589 (emphasis added).

53. Philip J. Deloria, *Playing Indian* (New Haven, CT: Yale University Press, 1998), 36.

54. *M’Intosh*, 21 U.S. at 590.

55. Richard Slotkin, *Regeneration Through Violence: The Mythology of the American Frontier, 1600–1860* (Middletown: Wesleyan University Press, 1973), 18.

56. Andre Bazin, “The Western: or the American Film *par Excellence*,” in Roger Ebert’s *Book of Film*, ed. Roger Ebert, 400, 402 (New York: Norton, 1997) (explaining how “Western literature, freed from the bonds of language, finds a distribution on the screen in keeping with its size—almost as if the dimensions of the image had become one with the imagination.”).

57. Tess Gallagher, "Shoot-Out at the Genre Corral: Problems in the 'Evolution' of the Western," in *Film Genre Reader II*, ed. Barry Keith Grant, 246, 248–49 (Austin: University of Texas Press, 1995).
58. Bazin, "The Western," 401.
59. Chuck Berg, "Fade-Out in the West: The Western's Last Stand?" in *Film Genre 2000: New Critical Essays*, ed. Wheeler Winston Dixon, 211, 212–13 (Albany: State University of New York Press, 2000).
60. Richard Slotkin, *Gunfighter Nation* (Norman: University of Oklahoma Press, 1992), 11–14 (Slotkin argues that a crucial part of the Western myth is that the hero must enter the wilderness of the frontier in order to "regress[] to a more primitive and natural condition of life" to free himself from the false values of life in the East.).
61. Manderson, "Trust Us Justice," this volume.
62. Bazin, "The Western," 406.
63. *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008).
64. Lee Clark Mitchell, "Violence in the Film Western," in *Violence and American Cinema*, ed. J. David Slocum, 176, 180 (London: Routledge, 2000).
65. *Deadwood*, Season 2, Episode 1 (HBO).
66. Ibid.
67. Bazin notes that in the western the star has an iconic quality that marks an important difference, but not one of morality. "The sheriff is not always a better person than the man he hangs. This begets and establishes an inevitable and necessary contradiction. There is often little moral difference between the outlaw and the man who operates within the law. Still, the sheriff's star must be seen as constituting a sacrament of justice, whose worth does not depend on the worthiness of the man who administers it." Bazin, "The Western," 405.
68. *Deadwood*, Season 2, Episode 2 (HBO).
69. Ibid.
70. Rebecca Johnson, "Living Deadwood: Imagination, Affect, and the Persistence of the Past," *Suffolk University Law Review* 42 (2009): 819.
71. Ibid., 828.
72. Patrick McGee, *From Shane to Kill Bill: Rethinking the Western* (Oxford: Blackwell, 2007), 236.
73. Ruth Buchanan and Rebecca Johnson, "The 'Unforgiven' Sources of International Law: Nation-Building, Violence, and Gender in the West(ern)," in *International Law: Feminist Approaches*, ed. Doris Buss and Ambreena Manji, 135–36 (Oxford: Hart, 2005).
74. J. P. Telotte, *Science Fiction Film* (Cambridge: Cambridge University Press, 2001), 63–75.

75. Ibid., 78–80.

76. Mark A. Graves and F. Bruce Engle, *Blockbusters: A Reference Guide to Film Genres* (Santa Barbara: Greenwood Press, 2006), 167.

77. Gene Autry starred in *The Phantom Empire* in 1935, which was a “pre-posterous yet psychologically compelling mix of science fiction, musical and Western elements.” Telotte, *Science Fiction Film*, 93.

78. Sobchack, *Screening Space*, 21.

79. Stephen Prince, *Visions of Empire: Political Imagery in Contemporary American Film* (Santa Barbara: Praeger, 1992), 156.

80. Graves and Engle, *Blockbuster*, 165.

81. For example, the 1950s marked one heyday within the genre, as the tensions generated both by the cold war and new technologies fueled the popular imagination. Not surprisingly, many of the science fiction films of the 1950s deal with alien invasions. Graves and Engle, *Blockbuster*, 171. See also, Peter Biskind, “Pods, Blobs, and Ideology in American Films of the Fifties,” in *Shadows of the Magic Lamp: Fantasy and Science Fiction on Film*, ed. George Slusser and Eric S. Rabkin, 58 (Carbondale: Southern Illinois University Press, 1985).

82. *Serenity*, Universal Pictures, 2005.

83. Fred Erisman, “Stagecoach in Space: The Legacy of Firefly,” *Extrapolation* 47 (2006): 253. Zoe explains what will happen if they are caught by Reavers: they will “rape us to death, eat our flesh, and sew our skins into clothing. And if we’re very, very lucky, they’ll do it in that order.” *Serenity*, Universal Pictures, 2005.

84. Ibid.

85. In the DVD commentary, Whedon talks proudly of the single shot of the interior of the ship, where the camera tours the entire ship and introduces each member of the crew in four and half minutes without a cut. Ibid.

86. Ibid.

87. Erisman, “Stagecoach in Space,” 255.

88. While I am confident that the name of the planet is a literary allusion, I like to think it is a legal allusion as well.

89. *Serenity*, Universal Pictures, 2005.

90. According to Sobchack, this quality distinguishes conservative mainstream sci-fi films, which “embrace the alien as an other who is like us,” from postmodern sci-fi films, which “erase alienation by articulating it as a universal condition in which we are aliens and aliens are us.” Sobchack, *Screening Space*, 294.

91. Bhaba, *The Location of Culture*, 122.

92. White, *Justice as Translation*, 257.
93. Even several centuries into the future, the survival of those who oppose imperialism depend on its capitalist impulses. See Johnson, "Living Deadwood," 814–15.
94. *Serenity*, Universal Pictures, 2005.
95. Benjamin, "The Task of the Translator," 79.
96. Bazin, "The Western," 407.